

**Snell & Wilmer**

LLP

LAW OFFICES  
350 South Grand Avenue, Suite 2600, Two California Plaza  
Los Angeles, California 90071  
(213) 929-2500

1 SNELL & WILMER L.L.P.  
Philip J. Graves (SBN 153441)  
2 pgraves@swlaw.com  
Greer N. Shaw (SBN 197960)  
3 gshaw@swlaw.com  
350 South Grand Avenue, Suite 2600  
4 Two California Plaza  
Los Angeles, CA 90071  
5 Telephone: (213) 929-2500  
Facsimile: (213) 929-2525  
6

Attorneys for Plaintiff  
James R. Glidewell Dental Ceramics, Inc.  
d/b/a Glidewell Laboratories

7 UNITED STATES DISTRICT COURT  
8  
9 CENTRAL DISTRICT OF CALIFORNIA  
10  
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL  
13 CERAMICS, INC.,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.  
18  
19

20 AND RELATED  
21 COUNTERCLAIMS.  
22  
23  
24

CASE NO. SACV11-01309-DOC(ANx)

**[PROPOSED] STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN SUPPORT  
OF JAMES R. GLIDEWELL DENTAL  
CERAMICS, INC.'S MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION FOR  
PARTIAL SUMMARY JUDGMENT AS  
TO KEATING DENTAL ARTS, INC.'S  
INVALIDITY DEFENSE AND  
COUNTERCLAIM**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

25 **HIGHLY CONFIDENTIAL - FILED UNDER SEAL**

26 **(PURSUANT TO PROTECTIVE ORDER DATED JANUARY 30, 2012)**  
27  
28

Having considered Plaintiff and Cross-Counterclaimant James R. Glidewell Dental Ceramics, Inc.'s ("Glidewell") motion for partial summary judgment in Glidewell's favor as to Keating Dental Arts, Inc.'s ("Keating") First Affirmative Defense of invalidity of Glidewell's BruxZir trademark, Registration No. 3,739,663, and as to Keating's Fourth Counterclaim for Cancellation of Trademark Registration No. 3,739,663, the supporting evidence and other materials submitted therewith, and Keating's opposition thereto, the Court finds that there is no genuine disputes as to the facts set forth below, and the Court further makes the following conclusions of law.

### I. UNCONTROVERTED FACTS

Uncontroverted Facts	Supporting Evidence
1. The BruxZir mark is a registered mark.	Declaration of Keith Allred In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Allred Decl.") ¶¶ 3-5; Exhibit 59 to the Appendix of Evidence in Support of James R. Glidewell Dental Ceramics, Inc.'s Motions for Summary Judgment (hereinafter, "Appendix of Evidence").
2. The BruxZir mark was registered on the Principal Register on January 19, 2010, as Reg. No. 3,739,663.	Allred Decl., ¶¶ 3-5; Exhibit 59 to Appendix of Evidence.
3. The United States Patent and Trademark Office ("PTO") issued the mark without requiring any showing of secondary meaning.	Allred Decl., ¶¶ 3-5; Exhibit 60 to Appendix of Evidence.

[PROPOSED] STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO KEATING DENTAL ARTS, INC.'S INVALIDITY DEFENSE AND COUNTERCLAIM

1 2 3 4 5 6	4. In Keating's Petition for Cancellation, Keating admitted that the BruxZir mark is at least "merely descriptive of the goods set forth in [Glidewell's] Registration."	Petition for Cancellation, Dkt#58-1, at ¶ 5.
7 8 9 10 11 12	5. Robert Brandon, Keating's General Manager, admitted at deposition that, REDACTED REDACTED	October 16, 2012 Deposition of Robert D. Brandon ("Brandon Depo."); 45:5-49:2, attached Exhibit 84 to Appendix of Evidence.
13 14 15 16 17 18	6. Brandon, who has been with Keating since February of 2003, was the person authorized to verify Keating's interrogatory responses.	Brandon Depo at 13:10-14, attached Exhibit 84 to Appendix of Evidence; Defendant's Responses to Plaintiff's First Set of Interrogatories Nos. 1-25, attached as Exhibits 81-82 to Appendix of Evidence.
19 20 21 22 23 24 25 26	7. Brandon admitted that REDACTED REDACTED	Brandon Depo at 47:17-22, attached Exhibit 84 to Appendix of Evidence.
27 28	8. Shaun Keating, Keating's	October 18, 2012 Deposition of Shaun

1 founder and CEO, admitted that	Keating ("Keating Depo."), at: 114:18-
2 REDACTED	115:5, attached Exhibit 85 to Appendix
3	of Evidence.
4	
5	
6 9. REDACTED	Exhibit 15, KDA3355, 3358, to
7 REDACTED	Appendix of Evidence.
8	
9	
10	
11	
12	
13 10. REDACTED	Exhibit 15, at KDA3446, to Appendix
14 REDACTED	of Evidence.
15	
16 11. REDACTED	Exhibit 15, at KDA3444, to Appendix
17 REDACTED	of Evidence
18	
19	
20	
21	
22 12. Practicing dentists located	Declaration of Gregory Doneff, D.D.S.,
23 throughout the country have testified	In Support Of James R. Glidewell
24 that the BruxZir mark is not generic.	Dental Ceramics, Inc.'s Motion For
25	Summary Judgment ("Doneff Decl.");
26	Declaration of Thomas E. Bell,
27	D.M.D., In Support Of James R.
28	Glidewell Dental Ceramics, Inc.'s

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<p>Motion For Summary Judgment ("Bell Decl."); Declaration of Stuart R. Newman, D.D.S., In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Newman Decl."); Declaration of Spencer D. Luke, D.M.D., In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Luke Decl."); Declaration of Howard S. Cohen, D.D.S., In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Cohen Decl."); Declaration of Terence J. Michiels, D.D.S., In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Michiels Decl."); Declaration of Kent J. Toca, D.D.S., In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Toca Decl.).</p>
<p>13. Dr. Doneff testifies: "[s]ince learning about Glidewell Labs's BRUXZIR brand zirconia crowns and bridges in 2009 and through the date of this declaration, I have known, and</p>	<p>Doneff Decl., ¶ 4; Bell Decl., ¶ 4; Newman Decl., ¶ 4; Luke Decl., ¶ 4; Cohen Decl., ¶ 4; Michiels Decl., ¶4; Toca Decl., ¶ 4.</p>

1 through various communications with  
2 other dentists, I am aware that other  
3 dentists have known, that the  
4 BRUXZIR mark is a brand or  
5 trademark that signifies a single source  
6 of zirconia crowns and bridges and the  
7 zirconia material from which those  
8 products are made. Since learning  
9 about Glidewell Labs's BRUXZIR  
10 brand zirconia crowns and bridges in  
11 2009 and through the date of this  
12 declaration, I have known, and through  
13 my various communications with other  
14 dentists, I am aware that other dentists  
15 have known, that the BRUXZIR mark  
16 is a brand or trademark associated with  
17 Glidewell Labs." This testimony of Dr.  
18 Doneff's is representative of the  
19 testimonies of Dr. Bell, Dr. Newman,  
20 Dr. Luke, Dr. Cohen, Dr. Michiels, and  
21 Dr. Toca.

22 14. Dr. Doneff also testifies that:  
23 "Both before and after September 2010,  
24 I, and other dentists with whom I  
25 regularly communicate, use the term  
26 "bruxer" exclusively to refer to a  
27 person who suffers from bruxism; i.e.,  
28

Doneff Decl, ¶¶ 7-8; Bell Decl., ¶¶ 7-8;  
Newman Decl., ¶¶ 7-8; Luke Decl.,  
¶¶ 7-8; Cohen Decl., ¶¶ 7-8; Michiels  
Decl., ¶¶ 7-8; Toca Decl., ¶¶ 7-8.

1 habitual and destructive grinding of the  
 2 teeth and clenching of the jaw. Both  
 3 before and after September 2010, the  
 4 terms "bruxer," "bruxer crown,"  
 5 "bruxzir," and "bruxzir crown" are not  
 6 terms that I, nor the dentists I  
 7 communicate with, use to refer to  
 8 zirconia crowns and bridges as a type  
 9 or category of product. I have never  
 10 used any of these terms to refer to  
 11 zirconia crowns or bridges as a type or  
 12 category of product, and I have never  
 13 heard any other dentist use any of those  
 14 terms for that purpose. Rather, both  
 15 before and after I learned about  
 16 Glidewell Labs's BRUXZIR brand  
 17 zirconia crowns and bridges in 2009,  
 18 when referring to zirconia crowns and  
 19 bridges as a type or category of product  
 20 generally, I, and the dentists that I  
 21 communicate with, use the terms  
 22 "zirconia crowns," "all zirconia  
 23 crowns," "monolithic zirconia crowns,"  
 24 "full zirconia crowns," or "solid  
 25 zirconia crowns." This testimony of  
 26 Dr. Doneff is representative of the  
 27 testimonies of Dr. Bell, Dr. Newman,  
 28

Dr. Luke, Dr. Cohen, Dr. Michiels, and Dr. Toca.	
15. Jim Shuck, Glidewell’s Vice President of Sales and Marketing, and a thirty-six year veteran of the dental industry, testifies that “[t]he generic terms for a BruxZir brand crown are ‘crown,’ ‘crown for bruxers,’ or ‘all zirconia crown.’ I have also heard a ‘solid zirconia crown,’ and a ‘full contour zirconia crown.’ The term ‘bruxzir’ is not used by Glidewell – or, to my knowledge, widely or generally used by anyone else – to refer to solid zirconia crowns.”	Declaration of James Shuck In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("Shuck Decl.") ¶ 14.
16. Dr. Michel DiTolla, Glidewell’s Director of Clinical Education & Research, and a practicing dentist since 1988, testifies that he directly interacts with two to three thousand dentists per year, the vast majority of which “have made statements ... indicating that they understand that BruxZir identifies Glidewell as the source of the crown products.”	Declaration of Dr. Michel C. DiTolla In Support Of James R. Glidewell Dental Ceramics, Inc.'s Motion For Summary Judgment ("DiTolla Decl.") ¶ 11.
17. Dr. DiTolla testifies, “when referring generally to a zirconia crown,	DiTolla Decl. ¶ 11.



1	dentists refer to the crown as a zirconia	
2	crown.”	
3	18. Dr. DiTolla further testifies that,	DiTolla Decl. ¶ 12.
4	in his 24 years as a dentist, he has never	
5	used the term “bruxer” to commonly	
6	refer to crowns, and that he has never	
7	heard any of the thousands of dentists	
8	he interacts with each year use the term	
9	“bruxer” to commonly refer to crowns.	
10	19. Dr. DiTolla opines that “‘bruxer’	DiTolla Decl. ¶ 12.
11	is not a commonly used term in the	
12	dental field for crowns. Instead, the	
13	term ‘bruxer’ refers to an individual	
14	who suffers from bruxism (i.e. grinds	
15	his or her teeth).”	
16	20. Rudy Ramirez, Glidewell’s	Declaration of Rudy Ramirez In
17	General Manager of the Fixed	Support Of James R. Glidewell Dental
18	Prosthodontics, testifies that each of the	Ceramics, Inc.'s Motion For Summary
19	more than 100 dentists that he has	Judgment ("Ramirez Decl.") ¶ 6.
20	personally guided on tours of	
21	Glidewell’s production facility have	
22	“expressed ... their awareness that	
23	Glidewell is the source for zirconia	
24	crowns and bridges produced and	
25	marketed under the BruxZir mark.”	
26	21. Robin Bartolo, Sales Manager	Declaration of Robin Bartolo In
27	for Glidewell Direct, who has actively	Support Of James R. Glidewell Dental
28		

1 participated in seventeen trade shows –  
2 attended by many thousands of dentists  
3 in total – since January of 2009,  
4 testifies that: “through [his] various  
5 communications with dentists and  
6 dental lab representatives at trade  
7 shows, [he is] aware that dentists and  
8 dental lab representatives generally are  
9 aware that the BruxZir mark is a brand  
10 or trademark that signifies a single  
11 source of zirconia crowns and bridges  
12 and the zirconia material from which  
13 those products are made.”

Ceramics, Inc.'s Motion For Summary  
Judgment ("Bartolo Decl.") ¶ 5.

14 22. Dr. Ronald Goldstein opines that  
15 “dentists do not refer to solid zirconia  
16 crowns as ‘bruxers’ or ‘bruxer crowns,”  
17 and that “dentists do not understand the  
18 mark BruxZir to refer to solid zirconia  
19 crowns from any source, but rather ...  
20 dentists understand the mark BruxZir to  
21 identify the source of solid zirconia  
22 crowns and material to make solid  
23 zirconia crowns – the solid zirconia  
24 crowns supplied by Glidewell.”

Declaration of Dr. Ronald Goldstein In  
Support Of James R. Glidewell Dental  
Ceramics, Inc.'s Motion For Summary  
Judgment ("Goldstein Decl.") ¶ 9.

25 23. Professor David Franklyn opines  
26 that “Glidewell’s BruxZir mark is not  
27 generic but rather is a suggestive mark,  
28

Declaration of David Franklyn In  
Support Of James R. Glidewell Dental  
Ceramics, Inc.'s Motion For Summary

1 2 3 4 5 6	and that, in any event, the BruxZir trade mark has strong brand recognition amongst United States dentists as a unique source identifier for full zirconia dental crowns made by Glidewell.”	Judgment ("Franklyn Decl.") ¶ 71.
7 8 9 10 11 12 13 14	24. The BruxZir mark is a combination of “brux” and “zir.” “Brux” suggests to relevant consumers (dentists) that BruxZir brand products are strong and durable, and are suitable for use in applications requiring superior strength and durability, such as for treating patients with bruxism.	Shuck Decl., ¶ 9; DiTolla Decl., ¶ 14; Ramirez Decl., ¶ 4; Goldstein Decl., ¶ 17; Franklyn Decl. ¶ 42.
15 16 17 18	25. “Zir” suggests that the products comprise zirconia, a hard and durable material successfully used in dental products.	Shuck Decl., ¶ 9; DiTolla Decl., ¶ 14; Ramirez Decl., ¶ 4; Goldstein Decl., ¶ 17; Franklyn Decl. ¶ 42.
19 20 21	26. Multiple medical and dental dictionaries provide no definition for “bruxzir” (or for “bruxer”).	DiTolla Decl., ¶ 12; Exhibit 75 to Appendix of Evidence.
22 23 24 25 26 27 28	27. Keating’s advertisement introducing the KDZ Bruxer brand product states, under a large color photograph of several zirconia crowns and bridges, “Introducing the All-New KDZ Bruxer. The Best Full-Contour	Exhibit 20, (KDA000854) to Appendix of Evidence.

1	Zirconia Restorations Available.”	
2	28. The advertisement goes on to say	Exhibit 20 (KDA000854) to Appendix
3	that “KDZ Bruxer is the ideal	of Evidence.
4	combination of strength and esthetics	
5	for your posterior crowns and bridges.”	
6	29. Drake Precision Laboratory	Exhibit 23 (KDA-002448) to Appendix
7	advertises its zirconia crown using the	of Evidence.
8	mark ZIR-CAST.	
9	30. Drake describes its product with	Exhibit 23 (KDA-002448) to Appendix
10	such terms as “all-ceramic,” “solid	of Evidence.
11	zirconia,” “high translucency zirconia,”	
12	“monolithic,” “nonmetallic,” etc.	
13	31. Keating’s advertising materials	Exhibit 16 (KDA 00843, 00851-00854)
14	demonstrate that Keating can, and does,	to Appendix of Evidence.
15	describe its products using a variety of	
16	alternative words and phrases such as	
17	“dental zirconia,” “medical grade	
18	zirconia ... for posterior single units	
19	and bridges,” “full contour zirconia,”	
20	“alternative to full-cast gold,” “full-	
21	contour zirconia restoration,” “for	
22	patients who grind or lack preparation	
23	space or porcelain,” etc.	
24	32. Prior to Glidewell’s introduction	DiTolla Decl., ¶ 17; Goldstein Decl., ¶¶
25	of its BruxZir brand products, neither	12-14; Doneff Decl., ¶ 8; Bell Decl.,
26	“bruxzir” nor “bruxer” had previously	¶ 8; Newman Decl., ¶ 8; Luke Decl.,
27	been used for the same or similar	¶ 8; Cohen Decl., ¶ 8; Michiels Decl.,
28		

1	products.	¶ 8; Toca Decl., ¶ 8.
2	33. Actual purchasers associate the	Doneff Decl., ¶¶ 3-6, 9-10; Bell Decl.,
3	BurxZir mark with Glidewell. These	¶¶ 3-6, 9-10; Newman Decl., ¶¶ 3-6, 9-
4	include Doctors Doneff, Bell, Newman,	10; Luke Decl., ¶¶ 3-6, 9-10; Cohen
5	Luke, Cohen, Michiels, and Toca.	Decl., ¶¶ 3-6, 9-10; Michiels Decl.,
6		¶¶ 3-6, 9-10; Toca Decl., ¶¶ 3-6, 9-10.
7	34. Dr. Doneff states: "Since	Doneff Decl., ¶ 5; Bell Decl., ¶ 5;
8	learning about Glidewell Labs's	Newman Decl., ¶ 5; Luke Decl., ¶ 5;
9	BRUXZIR brand zirconia crowns and	Cohen Decl., ¶ 5; Michiels Decl., ¶ 5;
10	bridges in 2009 and through the date of	Toca Decl., ¶ 5.
11	this declaration, I have known, and	
12	through various communications with	
13	other dentists, I am aware that other	
14	dentists have known, that the	
15	BRUXZIR mark is a brand or	
16	trademark that signifies that Glidewell	
17	Labs is the source of zirconia crowns	
18	and bridges marketed under that	
19	trademark." This testimony of Dr.	
20	Doneff is representative of the	
21	testimonies of Dr. Bell, Dr. Newman,	
22	Dr. Luke, Dr. Cohen, Dr. Michiels, and	
23	Dr. Toca.	
24	35. Dr. Doneff also states: "Since	Doneff Decl., ¶ 9; Bell Decl., ¶ 9;
25	learning about Glidewell Labs's	Newman Decl., ¶ 9; Luke Decl., ¶ 9;
26	BRUXZIR brand zirconia crowns and	Cohen Decl., ¶ 9; Michiels Decl., ¶ 9;
27	bridges in 2009 and through the date of	Toca Decl., ¶ 9.
28		

1 this declaration, I have often used the  
2 term BRUXZIR to identify zirconia  
3 crowns and bridges manufactured by  
4 Glidewell Labs, because I understand  
5 that the BRUXZIR mark is a brand or  
6 trademark that signifies that Glidewell  
7 Labs is the source of zirconia crowns  
8 and bridges marketed under that  
9 trademark.” This testimony of Dr.  
10 Doneff is representative of the  
11 testimonies of Dr. Bell, Dr. Newman,  
12 Dr. Luke, Dr. Cohen, Dr. Michiels, and  
13 Dr. Toca.

14 36. Dr. DiTolla testifies that he  
15 directly interacts with two to three  
16 thousand dentists per year, the vast  
17 majority of which “have made  
18 statements ... indicating that they  
19 understand that BruxZir identifies  
20 Glidewell as the source of the crown  
21 products.”

22 37. Rudy Ramirez testifies that each  
23 of the more than 100 dentists that he  
24 has personally guided on tours of  
25 Glidewell’s production facility have  
26 “expressed ... their awareness that  
27 Glidewell is the source for zirconia  
28

DiTolla Decl., ¶ 11.

Ramirez Decl., ¶ 7.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

crowns and bridges produced and marketed under the BruxZir mark."	
38. Robin Bartolo, who has actively participated in seventeen trade shows – attended by many thousands of dentists in total – since January of 2009, testifies that: "through [his] various communications with dentists and dental lab representatives at trade shows, [he is] aware that dentists and dental lab representatives generally are aware that the BruxZir mark is a brand or trademark that signifies a single source of zirconia crowns and bridges and the zirconia material from which those products are made."	Bartolo Decl., ¶ 5.
39. As part of the initial launch, Glidewell sent direct mail pieces for dentists, mailed samples of BruxZir brand products to current customers, sent email blasts to 125,000 dentists through the American Dental Association's dentist listing, produced and posted educational videos online, and announced continuing education programs for the product.	Shuck Decl., ¶ 7.
40. Since the introduction of BruxZir	Shuck Decl., ¶ 20; Exhibits 9-14, 17-

1 2 3 4 5 6 7 8 9 10 11	brand products, Glidewell has consistently and regularly advertised the brand, in association with the Glidewell Labs name, in a wide variety of ways, including via the company's website ( <a href="http://www.bruxzir.com">www.bruxzir.com</a> ) and blog, press releases, patient and doctor education brochures, videos, advertisements in dental publications, direct mailers, email blasts, and trade shows.	19, 21-22, and 24-25 to the Appendix of Evidence.
12 13 14 15 16	41. BruxZir.com received approximately 289,210 unique pageviews between October 2009 and November 2012, with 78% of this volume from U.S. traffic.	Shuck Decl., ¶ 21.
17 18 19 20 21 22 23 24 25 26	42. Glidewell regularly and consistently advertises the BruxZir brand product line in dental industry publications, including <i>ADA News</i> , <i>Chairside Magazine</i> , <i>Dental Economics</i> , <i>Dental Lab Reports</i> , <i>Dentaltown</i> , <i>Dental Tribune</i> , <i>Dentistry Today</i> , <i>Inclusive Magazine</i> , the <i>Journal of Dental Technology</i> , and <i>Lab Management Today</i> .	Shuck Decl., ¶ 22; DiTolla Decl., ¶¶ 6-7; Exhibits 21-22 to the Appendix of Evidence.
27 28	43. Glidewell consistently sends out	Shuck Decl., ¶ 23.



1 2 3 4	e-mail blasts approximately quarterly to U.S. dentists and dental laboratories, advertising Glidewell's BruxZir branded product line.	
5 6 7 8 9 10	44. These e-mail blasts are sent to Glidewell's internal e-mail list, which contains approximately 24,000 dentists, and to the American Dental Association's e-mail list, which has about 89,000 dentists.	Shuck Decl., ¶ 23.
11 12 13 14 15 16 17	45. Glidewell consistently conducts quarterly direct mail advertising for BruxZir branded crowns. For this direct mail advertising, Glidewell uses a list, purchased from the American Dental Association, of approximately 125,000 dentists.	Shuck Decl., ¶ 24.
18 19 20 21	46. Glidewell personnel regularly and consistently attend dozens of trade shows and conventions per year around the country.	Shuck Decl., ¶ 26.
22 23 24 25 26 27 28	47. At these conventions and trade shows, which are attended by, in the aggregate, thousands of dentists, Glidewell consistently and prominently displays the BruxZir brand, in association with the Glidewell Labs	Shuck Decl., ¶ 26.

1	name, in a wide variety of contexts,	
2	including on the booth, the signage, in	
3	brochures, takeaways, and product	
4	displays and demonstrations.	
5	48. As part of Glidewell's marketing	Shuck Decl., ¶ 27; DiTolla Decl., ¶¶ 4-
6	efforts for the BruxZir brand,	5; Exhibit 73 to the Evidence of
7	Glidewell's Director of Clinical	Appendix.
8	Education and Research, Dr. DiTolla,	
9	made a series of educational videos in	
10	2009 and 2010, and he made a	
11	compendium of all videos with a new	
12	introduction in 2011.	
13	49. The videos explain and illustrate	Shuck Decl., ¶ 27.
14	various features and benefits of	
15	BruxZir brand products, and	
16	prominently feature the BruxZir brand	
17	in association with the Glidewell Labs	
18	name.	
19	50. The videos are publicly available	Shuck Decl., ¶ 27.
20	on Glidewell's website and YouTube	
21	channel, and the video pages have had	
22	approximately 30,000 unique	
23	pageviews between October 2009 and	
24	November 2012.	
25	51. Glidewell personnel, including	Shuck Decl., ¶¶ 28-29; DiTolla Decl.,
26	Dr. DiTolla and Robin Carden (Vice	¶¶ 4-10; Carden Decl., ¶¶ 3-6, 11-15;
27	President of Research and	Exhibits 21-22, 24-25, 53-57, 67, and
28		

1 2 3 4 5	Development) regularly publish articles and give presentations that prominently feature the BruxZir brand in association with the Glidewell Labs name.	73 to the Appendix of Evidence.
6 7 8 9 10	52. The BruxZir brand and BruxZir brand products have garnered substantial third party recognition in the form of, for example, awards and laudatory press coverage.	Shuck Decl., ¶¶ 30-36; Carden Decl., ¶ 15; Exhibits 26-38, and 41-45 to the Appendix of Evidence.
11 12 13 14 15 16	53. Glidewell's total marketing expenses for the BruxZir brand product line from June 2009 through June 2012 are approximately REDACTED, which represents approximately REDACTED of Glidewell's overall marketing budget.	Shuck Decl., ¶¶ 38-41; Exhibit 46 to the Appendix of Evidence.
17 18 19 20	54. Of this figure, approximately REDACTED REDACTED was directed to advertising and marketing BruxZir brand finished crowns and bridges.	Shuck Decl., ¶¶ 38-41; Exhibit 46 to the Appendix of Evidence.
21 22 23 24 25 26	55. Glidewell's extensive promotion of the BruxZir mark has been successful in cementing in the minds of dentists a strong association between the mark and Glidewell as the source of BruxZir brand dental restoration products.	Doneff Decl., ¶¶ 3-4, 10; Bell Decl., ¶¶ 3-4, 10; Newman Decl., ¶¶ 3-4, 10; Luke Decl., ¶¶ 3-4, 10; Cohen Decl., ¶¶ 3-4, 10; Michiels Decl., ¶¶ 3-4, 10; Toca Decl., ¶¶ 3-4, 10.
27 28	56. Glidewell has consistently used	Shuck Decl., ¶¶ 19-29; Exhibits 8-14,

1 2 3 4	the BruxZir mark for crowns and bridges for over three years, since the launch of the product line in 2009.	17-19, 21-22, and 24-25 to the Evidence of Appendix.
5 6 7	57. Glidewell has extensively promoted the mark in a wide variety of communication channels.	Shuck Decl., ¶¶ 19-29; Exhibits 8-14, 17-19, 21-22, and 24-25 to the Evidence of Appendix.
8 9 10 11	58. Glidewell has ensured that the BruxZir mark is widely promoted in association with the Glidewell Labs name.	Shuck Decl., ¶¶ 13, 19-29; DiTolla, ¶¶ 4-10; Exhibits 7-14, 17-19, 21-22, 24-25, and 73 to the Evidence of Appendix.
12 13 14 15 16	59. This sustained activity has effectively reached the relevant consumers (dentists) and caused them to associate the BruxZir mark with the source of BruxZir products, Glidewell.	Doneff Decl., ¶¶ 3-4, 10; Bell Decl., ¶¶ 3-4, 10; Newman Decl., ¶¶ 3-4, 10; Luke Decl., ¶¶ 3-4, 10; Cohen Decl., ¶¶ 3-4, 10; Michiels Decl., ¶¶ 3-4, 10; Toca Decl., ¶¶ 3-4, 10.
17 18 19 20	60. As discussed in Professor Franklyn's declaration, the BruxZir mark does not exist in a crowded field of similar marks.	Franklyn Decl., ¶ 46.
21 22 23 24 25	61. It is Glidewell's policy and practice to actively protect its mark by, for example, sending cease and desist letters to competitors using confusingly similar marks.	Allred Decl., ¶¶ 11-26; Exhibits 62-69 to the Appendix of Evidence.
26 27 28	62. Glidewell is a leading provider of dental restoration products to dentists.	Shuck Decl., ¶ 4.

1	63. Among the products that	Shuck Decl., ¶ 4.
2	Glidewell sells are dental crowns and	
3	bridges.	
4	64. A crown is a type of dental	Shuck Decl., ¶ 4.
5	restoration product that completely	
6	caps a tooth.	
7	65. It is typically bonded to the tooth	Shuck Decl., ¶ 4.
8	using dental cement or resin.	
9	66. In the past, crowns were	Shuck Decl., ¶ 5.
10	principally fashioned either from gold	
11	(which has favorable tensile	
12	characteristics but is considered	
13	aesthetically unappealing by many	
14	people) or from porcelain veneers fused	
15	to a metal casting (which is	
16	aesthetically appealing but tends to	
17	crack when subjected to heavy pressure	
18	or grinding).	
19	67. More recently, dental	Shuck Decl., ¶ 5.
20	laboratories began to fashion crowns	
21	made of a veneer fused or adhered to a	
22	hard ceramic such as zirconia.	
23	68. However, these crowns too	Shuck Decl., ¶ 5.
24	tended to crack when subjected to	
25	heavy grinding.	
26	69. Beginning in 2005, Glidewell	Carden Decl., ¶ 2.
27	began developing a new type of crown,	
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

a solid zirconia crown.	
70. The advantages of this new monolithic zirconia (or “full contour zirconia”) crown were that it would be extremely hard – sufficiently hard to be used in applications requiring a material with high tensile and compressive strength, including treating patients with “bruxism,” a parafunctional activity in which a person repeatedly and habitually grinds his teeth – and that it could be milled from a block of zirconia based on a digital representation of the patient’s mouth.	Shuck Decl., ¶ 9.
71. The disadvantage was that zirconia is an unattractive material, due to its extreme whiteness and lack of translucency.	Shuck Decl., ¶ 10.
72. Ultimately, Glidewell partially overcame the aesthetic challenges of the material, devising a process for fabricating a full contour zirconia crown that was sufficiently appealing that it could be used in a variety of applications.	Shuck Decl., ¶ 10.
73. In early 2009, Glidewell	Shuck Decl., ¶ 3; September 25, 2012

1 2 3 4	conceived the name for its new line of monolithic zirconia dental restoration products: BruxZir.	Deposition of Jim Shuck ("Shuck Depo."); 15:21-16:8, attached Exhibit 83 to Appendix of Evidence.
5 6 7 8 9 10 11 12 13	74. The name was chosen in large part because it suggested the primary characteristics of the product: that it was sufficiently strong and durable to be used in a variety of applications, including treating patients with bruxism ("Brux"), and that the material from which the crown was fashioned is zirconia ("Zir").	Shuck Decl., ¶ 9.
14 15 16	75. The product line was launched under the BruxZir mark in June 2009.	Shuck Decl., ¶ 7; Shuck Depo. at 15:21-16:8, attached Exhibit 83 to Appendix of Evidence.
17 18 19 20 21 22 23	76. Since its introduction in 2009, the BruxZir line of restoration products (primarily dental crowns and bridges) has been phenomenally popular, generating nearly REDACTED in REDACTED	Shuck Decl., ¶¶ 40-41; Exhibit 46 to the Appendix of Evidence.
24 25 26 27 28	77. Glidewell has promoted the product line heavily, investing nearly REDACTED in advertising its products under the BruxZir mark from June 2009 to June 2012.	Shuck Decl., ¶ 39.

1 2 3 4 5 6	78. Glidewell applied to register the BruxZir mark on June 7, 2009 for use in connection with dental bridges, dental caps, dental crowns, dental inlays, dental onlays, and dental prostheses.	Allred Decl., ¶ 3; Exhibits 59-60 to the Appendix of Evidence.
7 8 9	79. The BruxZir mark was registered on the Principal Register on January 19, 2010, as Reg. No. 3,739,663.	Allred Decl., ¶¶ 4-5; Exhibits 59-60 to the Appendix of Evidence.
10 11 12 13 14	80. As noted on the registration for the BruxZir mark, the class of goods and services is "Dental bridges; Dental caps; Dental crowns; Dental inlays; Dental onlays; Dental prostheses."	Allred Decl., ¶¶ 3-5; Exhibit 59 to the Appendix of Evidence.
15 16 17 18 19 20 21 22 23	81. Glidewell also applied to register the BruxZir mark in connection with another class of goods – dental ceramics – on May 27, 2011; Keating filed an opposition to that application on December 7, 2011, and the case is currently suspended in the Trademark Trial and Appeal Board pending the outcome of this action.	Allred Decl., ¶¶ 7-8; Exhibit 61 to the Appendix of Evidence.
24 25 26 27 28	82. In May 2011, after nearly two years of massive advertising and promotional activity by Glidewell under its BruxZir mark, Keating began	Shuck Decl., ¶ 15.



1 2 3 4	to offer competing full contour zirconia dental crowns and bridges under the brand "KDZ Bruxer."	
5 6 7 8 9 10 11 12	83. Keating's product competes directly with Glidewell's BruxZir product – the products are offered to the same universe of consumers (dentists) through the same marketing channels (e.g., Internet, direct mail, ads in dental industry journals) and at similar price points (\$99 v. \$139).	Shuck Decl., ¶¶ 16, 19-29; Exhibits 8-14, 17-19, 21-22, and 24-25 to the Evidence of Appendix.
13 14 15 16	84. In a sampling of 22 dentists identified by Keating as KDZ Bruxer customers, nine – i.e., 41% – were former Glidewell BruxZir customers.	Ramirez Decl. ¶ 9; Defendant's Third Amended Initial Disclosures, attached as Exhibit 88 to the Appendix of Evidence.

## II. CONCLUSIONS OF LAW

1. To be valid and protectable, a mark must be "distinctive." *Zobmondo Enter., LLC v. Falls Media, LLC*, 602 F.3d 1108, 1113 (9<sup>th</sup> Cir. 2010).
2. "Distinctiveness measures 'the primary significance of the mark to the purchasing public.'" *Id.* There are five categories of trademarks: (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; and (5) fanciful. *E.g., Yellow Cab Co. of Sacramento v. Yellow Cab Co. of Elk Grove, Inc.*, 419 F.3d 925, 927 (9<sup>th</sup> Cir. 2005).
3. "The latter three categories are deemed inherently distinctive and are automatically entitled to protection because they naturally 'serve[] to identify a particular source of a product ....'" *Yellow Cab*, 419 F.3d at 927 (quoting *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596,

- 1 602 (9th Cir. 2005)).
- 2 4. A generic mark carries no protection, while a descriptive mark, although not
- 3 inherently distinctive, can receive protection if it has acquired distinctiveness
- 4 by establishing “secondary meaning” in the marketplace. *See id.* Which
- 5 category a mark belongs in is a question of fact. *Zobmondo Enter.*, 602 F.3d
- 6 at 1113.
- 7 5. In determining distinctiveness, the Court is “required to consider standards
- 8 of meaning not [its] own, but prevalent among prospective purchasers of the
- 9 article.” *Zobmondo Enter.*, 602 F.3d at 1113 (quoting *Bada Co. v.*
- 10 *Montgomery Ward & Co.*, 426 F.2d 8, 11 (9th Cir. 1970)).
- 11 6. “The fact-finder is not the designated representative of the purchasing public,
- 12 and the fact-finder's own perception of the mark is not the object of the
- 13 inquiry. Rather, the fact-finder's function is to determine, based on the
- 14 evidence before it, what the perception of the purchasing public is.”
- 15 *Zobmondo Enter.*, 602 F.3d at 1113 (quoting *Lane Capital Mgmt., Inc. v.*
- 16 *Lane Capital Mgmt., Inc.*, 192 F.3d 337, 344 (2d Cir. 1999)).
- 17 7. “[T]he fact that a mark is registered is *strong evidence* that the mark satisfies
- 18 the statutory requirements for distinctiveness necessary for trademark
- 19 protection.” *Zobmondo Enter.*, 602 F.3d at 1121 (quoting *Retail Servs., Inc.*
- 20 *v. Freebies Publ’g*, 364 F.3d 535, 542 (4th Cir. 2004) (emphasis added)).
- 21 8. A “federal registration ... entitles the plaintiff to a ‘strong presumption’ that
- 22 the mark is a protectable mark.” *Zobmondo Enter., LLC v. Falls Media,*
- 23 *LLC*, 602 F.3d 1108, 1113 (9<sup>th</sup> Cir. 2010); *see also, e.g., Reno Air Racing*
- 24 *Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1135 (9th Cir. 2006) (“[R]egistered
- 25 marks are endowed with a strong presumption of validity ...”).
- 26 9. “[T]he burden on the defendant necessary to overcome that presumption at
- 27 summary judgment is heavy.” *Zobmondo Enter.*, 602 F.3d at 1115.
- 28 10. “Where the PTO issues a registration without requiring proof of secondary

- 1 meaning, the presumption is that the mark is inherently distinctive.”  
2 *Zobmondo Enter.*, 602 F.3d at 1113-14; *see also, e.g., Quiksilver, Inc. v.*  
3 *Kymsta Corp.*, 466 F.3d 749, 760 (9<sup>th</sup> Cir. 2006) (“Where, as here, the PTO  
4 issues a mark registration without requiring proof of secondary meaning, the  
5 registrant ... enjoys a ‘presumption that the purchasing public perceives the  
6 ... mark to be inherently distinctive.”).
- 7 11. As the Ninth Circuit has explained, “[d]eference to the PTO’s classification  
8 decision is sensible because the PTO has special expertise that we lack on  
9 this fact-intensive issue.” *Zobmondo Enter.*, 602 F.3d at 1121 (quoting  
10 *Lahoti v. Vericheck, Inc.*, 586 F.3d 1190, 1199 (9<sup>th</sup> Cir. 2009)).
- 11 12. “Marks that constitute a common descriptive name are referred to as generic.  
12 A generic term is one that refers to the genus of which the particular product  
13 is a species.” *Park ‘N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189,  
14 194 (1985).
- 15 13. “‘To determine whether a term has become generic, we look to whether  
16 consumers understand the word to refer only to a particular producer's goods  
17 or whether the consumer understands the word to refer to the goods  
18 themselves.’” *Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove,*  
19 *Inc.*, 419 F.3d 925, 929 (9<sup>th</sup> Cir. 2004) (quoting *KP Permanent Make-Up,*  
20 *Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 604 (9<sup>th</sup> Cir. 2005)).
- 21 14. If a buyer understands the terms as being identified with a particular  
22 producer’s goods or services, it is not generic. *Id.*
- 23 15. The Ninth Circuit has held that “[t]he crucial date for the determination of  
24 genericness is the date on which the alleged infringer entered the market with  
25 the disputed mark or term.” *Yellow Cab Co. of Sacramento v. Yellow Cab of*  
26 *Elk Grove, Inc.*, 419 F.3d 925, 928 (9<sup>th</sup> Cir. 2004); *Nora Beverages, Inc. v.*  
27 *Perrier Grp. of Am., Inc.*, 164 F.3d 736, 744 (2<sup>d</sup> Cir. 1998) (holding that the  
28 relevant date for judging genericness is the date upon which Perrier, the

- competitor, introduced its competing product into the market); *see also* 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:17.50, p. 12-61 (2012) (“The Second and Ninth Circuits have held that the crucial date for the determination of genericness is the date on which the alleged infringer entered the market with the disputed mark or term.”).
16. Although the import of this evidence is not precisely clear, it is clear the Court must focus the validity inquiry on the trademark as a whole. *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1135 (9<sup>th</sup> Cir. 2006).
17. It is also clear under Ninth Circuit law that a composite mark may be distinctive even though its components individually are not. *Id.* (citing *California Cooler, Inc. v. Loretto Winery, Ltd.*, 774 F.2d 1451, 1455 (9<sup>th</sup> Cir. 1985)). Put another way, “the combination of generic terms may, in some instances, result in a distinctive mark.” *Advertise.com, Inc. v. AOL Advertising, Inc.*, 616 F.3d 974, 978 (9<sup>th</sup> Cir. 2010).
18. A suggestive mark is one for which “‘a consumer must use imagination or any type of multistage reasoning to understand the mark’s significance ... the mark does not *describe* the product’s features, but *suggests* them.” *Zobmondo Enter.*, 602 F.3d at 1114 (quoting *Kendall-Jackson Winery, Ltd. v. E.&J. Gallo Winery*, 150 F.3d 1042, 1047 n.8 (9<sup>th</sup> Cir. 1998)).
19. “[A] mark can be suggestive and still convey information about a product.” *Zobmondo Enter.*, 602 F.3d at 1119; *see, e.g.*, 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 11:72 (4<sup>th</sup> ed. 2010) (listing marks that have been found “suggestive,” including “CITIBANK” for an urban bank, “CLASSIC COLA” for a soft drink, “DIAL-A-MATTRESS” for mattress sales, and “FLORIDA TAN” for suntan lotion).
20. The most common test for assessing suggestiveness is the “imagination test,” which asks whether “‘imagination or a mental leap is required in order to reach a conclusion as to the nature of the product being referenced.’”

- 1           *Zobmondo Enter.*, 602 F.3d at 1115 (quoting *Rudolph Int'l v. Realys, Inc.*,  
2           482 F.3d 1195, 1198 (9th Cir. 2007)).
- 3   21.   The imagination test “does not ask what information about the product *could*  
4           be derived from a mark, but rather whether ‘a mental leap is *required*’ to  
5           understand the mark’s relationship to the product.” *Id.* at 1116 (quoting  
6           *Rudolph Int'l*, 482 F.3d at 1198).
- 7   22.    “[I]f the mental leap between the word and the product’s attribute is not  
8           almost instantaneous, this strongly indicates suggestiveness, not direct  
9           descriptiveness.” *Self-Realization Fellowship Church v. Ananda Church of*  
10          *Self-Realization*, 59 F.3d 902, 911 (9th Cir. 1995).
- 11   23.   The Ninth Circuit has noted that the facts that a mark cannot be found in  
12          dictionaries, and is without literal meaning, support suggestiveness. *See*  
13          *Zobmondo Enter.*, 602 F.3d at 1116.
- 14   24.   The Ninth Circuit has also noted that evidence that the accused infringer  
15          includes explanatory language with its allegedly infringing mark supports  
16          finding the mark to be suggestive rather than descriptive or generic. *See*  
17          *Zobmondo Enter.*, 602 F.3d at 1120 n.12 (noting that accused infringer’s use  
18          of explanatory language with its mark “cuts against the [accused infringer’s]  
19          argument that [the mark] is a well-established, culturally-pervasive  
20          concept”).
- 21   25.   The second test for assessing suggestiveness, known as the “competitors’  
22          needs” test, “focusses on the extent to which a mark is actually needed by  
23          competitors to identify their goods or services.” *Zobmondo Enter.*, 602 F.3d  
24          at 1117 (quoting *Rodeo Collection, Ltd. v. W. Seventh*, 812 F.2d 1215, 1218  
25          (9<sup>th</sup> Cir. 1987)); *see also Miss World (UK), Ltd. V. Mrs. America Pageants,*  
26          *Inc.*, 856 F.2d 1445, 1449 (9<sup>th</sup> Cir. 1987).
- 27   26.    “If competitors have a great need to use a mark, the mark is probably  
28          descriptive; on the other hand, if ‘the suggestion made by the mark is so

- remote and subtle that it is really not likely to be needed by competitive sellers to describe their goods or services[,] this tends to indicate that the mark is merely suggestive.” *Zobmondo Enter.*, 602 F.3d at 1117 (quoting *Rodeo Collection*, 812 F.2d at 1218).
27. Evidence that competitors do not need to use the mark supports finding the mark suggestive. *See Zobmondo Enter.*, 602 F.3d at 1117 (noting that competitors’ needs test “strongly favored” suggestiveness in view of, among other things, “significance evidence suggesting that [the mark holder’s] competitors do not need to use [the mark] to fairly describe their products”); *see also Aluminum Fabricating Co. v. Season-All Window Corp.*, 259 F.2d 314, 317 (2d Cir. 1958) (holding that “Season-all” did not render it difficult for competitors selling other storm doors and storm windows to adequately describe their products because there were a “wealth of synonyms and related words with which to describe” their own products).
28. Evidence that the mark had never previously been used for the same or similar products before “suggests that competitors do not find the mark useful in describing their products.” *Zobmondo Enter.*, 602 F.3d at 1120 (noting that expert’s testimony on “lack of [prior] third party use tends to negate the inference ... that the mark is widely understood by consumers to refer to [the product at issue]”).
29. A “merely descriptive” mark “describes the qualities or characteristics of a good or service.” *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). It “define[s] qualities or characteristics of a product in a straightforward way that requires *no exercise of the imagination to be understood.*” *Zobmondo Enter.*, 602 F.3d at 1114 (quoting *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1141-42 (9<sup>th</sup> Cir. 2002) (emphasis added)).
30. When the challenged mark is a registered mark, the “putative infringer’s



burden is not simply to show that the mark describes a feature of the trademark holder's product; rather, it must show that consumers regard the mark as *merely* descriptive of that product.” *Zobmondo Enter.*, 602 F.3d at 1117 (quoting *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 119 (1st Cir. 2006)).

31. Although descriptive marks are not inherently distinctive and are therefore not entitled to automatic trademark protection, “a merely descriptive mark can become protectable if it has acquired distinctiveness ‘as used on or in connection with the applicant’s goods in commerce.’” *Zobmondo Enter.*, 602 F.3d at 1113 (quoting 15 U.S.C. § 1052(f)). This acquired distinctiveness is referred to as “secondary meaning.” *Id.*

32. “Secondary meaning is used generally to indicate that a mark ... ‘has come through use to be uniquely associated with a specific source.’” *Quicksilver, Inc. v. Kymsta Corp.*, 466 F.3d 749, 760 (9<sup>th</sup> Cir. 2006) (quoting *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 766 n.4 (1992)).

33. Determining whether a descriptive mark has secondary meaning requires consideration of (1) whether actual purchasers of the product bearing the claimed trademark associate the trademark with the producer; (2) the degree and manner of advertising under the claimed trademark; (3) the length and manner of use of the claimed trademark; and (4) whether the use of the claimed trademark has been exclusive. *E.g., Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 930 (9th Cir. 2005).

Dated:

By:

Hon. David O. Carter  
United States District Judge

***Glidewell Laboratories v. Keating Dental Arts, Inc.***  
**United States District Court, Central, Case No. SACV11-01309-DOC (ANx)**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2012, I electronically filed the document described as **[PROPOSED] STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO KEATING DENTAL ARTS, INC.'S INVALIDITY DEFENSE AND COUNTERCLAIM** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

David G. Jankowski  
Jeffrey L. Van Hoosear  
Lynda J Zadra-Symes  
Knobbe Martens Olson and Bear LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614

**Attorneys for Defendant Keating  
Dental Arts, Inc.**  
Tel: (949) 760-0404  
Fax: (949) 760-9502

Jeffrey.vanhoosear@kmob.com  
David.jankowski@kmob.com  
Lynda.zadra-symes@kmob.com  
litigation@kmob.com

Dated: November 19, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. Graves

Philip J. Graves  
Greer N. Shaw

Attorneys for Plaintiff  
James R. Glidewell Dental Ceramics, Inc.  
dba GLIDEWELL LABORATORIES

16139994.1

Certificate of Service  
SACV11-01309-DOC (ANx)